STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

JACQUES TOWNSEND,

Defendant-Appellant.

UNPUBLISHED
November 14, 2013

No. 311190
Wayne Circuit Court
LC No. 12-001434-FH

Before: OWENS, P.J., and JANSEN and HOEKSTRA, JJ.

PER CURIAM.

Defendant appeals by right his jury-trial convictions of carrying a concealed weapon (CCW), MCL 750.227, possession of a firearm by a felon (felon-in-possession), MCL 750.224f, and possession of a firearm during the commission of a felony (felony-firearm), second offense, MCL 750.227b. Defendant was sentenced as a fourth habitual offender, MCL 769.12, to concurrent prison terms of 1½ to 7 years for the CCW and felon-in-possession convictions. He was also sentenced to a consecutive, mandatory term of five years in prison for the felony-firearm conviction. We affirm.

While travelling in an unmarked patrol car, Detroit Police Officers Brandon Cawley, Rhonda Sherman, Juan Reynoso, and Marcus Thirlkill observed a group of men standing next to a parked truck, drinking what appeared to be alcoholic beverages in public. The officers parked the scout car next to the truck.

Officer Cawley testified that once the officers exited the vehicle, defendant immediately looked in the officers' direction and "began grabbing his right waistband." Officer Cawley then observed defendant walk towards the front of the truck and begin "to make a throwing motion." Officer Cawley saw a weapon in defendant's hand. Defendant was placed under arrest. Officer Cawley retrieved the firearm. Officer Cawley did not have any contact with any of the other men who were present at the scene.

Officer Thirlkill's and Officer Sherman's testimony conflicted with Officer Cawley's testimony concerning certain minor details. For example, Officer Thirlkill testified that several men were drinking from red cups and that there was a bottle of Ciroc vodka on the hood of the truck. Officer Sherman also testified that she observed "a vodka bottle on the top of the hood of the truck," as well as an individual holding a red plastic cup. Officer Cawley did not see a bottle of vodka and testified that the cups were clear.

Defendant contends that there was prosecutorial misconduct at trial because the prosecutor disparaged defense counsel through statements made during closing and rebuttal arguments. We disagree.

"[T]o preserve a claim of prosecutorial misconduct for appellate review, a defendant must have timely and specifically objected below, unless objection could not have cured the error." *People v Brown*, 294 Mich App 377, 382; 811 NW2d 531 (2011). Because defendant did not object to the prosecutor's arguments, this issue is not preserved for appeal. "Unpreserved claims of prosecutorial misconduct are reviewed for plain error affecting substantial rights." *Id.* Under the plain error rule, a defendant must show that "(1) error occurred, (2) the error was plain, i.e., clear or obvious, and (3) the plain error affected a substantial right of the defendant." *People v Pipes*, 475 Mich 267, 279; 715 NW2d 290 (2006). The third factor requires "a showing of prejudice," or that the error was outcome determinative. *People v Carines*, 460 Mich 750, 763; 597 NW2d 130 (1999).

This Court reviews claims of prosecutorial conduct on a case-by-case basis. *People v Watson*, 245 Mich App 572, 586; 629 NW2d 411 (2001). We examine the challenged comments in context "to determine whether the defendant received a fair and impartial trial." *Id.* "[P]rosecutors are accorded great latitude regarding their arguments, and are free to argue the evidence and all reasonable inferences from the evidence as they relate to their theory of the case." *People v Seals*, 285 Mich App 1, 22; 776 NW2d 314 (2009). Prosecutorial statements that attack a defendant's theory of the case and illustrate weaknesses in the defense do not generally constitute prosecutorial misconduct. *People v Callon*, 256 Mich App 312, 331; 662 NW2d 501 (2003). However, "[a] prosecutor may not suggest that defense counsel is intentionally attempting to mislead the jury." *Watson*, 245 Mich App at 592; see also *People v Unger*, 278 Mich App 210, 238; 749 NW2d 272 (2008).

Defendant claims that the prosecutor disparaged defense counsel during closing argument by stating that defense counsel is a "good attorney" because she can pick apart details. More specifically, the prosecutor argued: "[a] good attorney like Ms. Longstreet, she's gonna pick apart details; was it a red cup, was it a clear cup, who had a cup? Was it Ciroc, was it vodka?"

Examining the statements in context, it is clear that the prosecutor was not suggesting that defense counsel was trying to confuse or mislead the jury. Rather, the prosecutor recognized uncertainty regarding the color of the cups and the presence of a vodka bottle, which defense counsel stressed throughout the entire trial. The prosecutor was attempting to persuade the jury to look at the case as whole. We perceive no misconduct in this regard. *Watson*, 245 Mich App at 593.

Defendant claims that the prosecutor once more disparaged defense counsel during rebuttal argument by stating that defense counsel was doing a "great job" picking apart the details. In particular, the prosecutor stated:

> That's the thing about these cases, and Ms. Longstreet is absolutely doing a great job picking at that. Was it a red cup? Was it a clear cup? Was it Ciroc? Was it vodka? Was it on the hoo[d]?

During defense counsel's closing argument, she asserted that the details did matter and suggested that the investigation was performed inadequately, which resulted in the inconsistent testimony. When the prosecution's rebuttal statements are viewed in context, however, it is evident that the prosecutor was merely describing how the officers' testimony was essentially consistent. The prosecutor's argument was not improper because he was merely rebutting defense counsel's suggestion that the officers had not performed an adequate investigation and that this had caused the inconsistencies. *People v Bennett*, 290 Mich App 465, 479; 802 NW2d 627 (2010).

In addition, we note that the trial court instructed the jury that its verdict must be based solely on the evidence and that the attorneys' arguments were not evidence. This instruction was sufficient to dispel any potential prejudice. *Unger*, 278 Mich App at 238; *People v Long*, 246 Mich App 582, 588; 633 NW2d 843 (2001). There was no plain error affecting defendant's substantial rights. See *Carines*, 460 Mich at 763.

Affirmed.

/s/ Donald S. Owens
/s/ Kathleen Jansen
/s/ Joel P. Hoekstra